

## **REMARKS**

Claims 1-3, 5, 6, 9, and 59-71 are pending in the application. In this response, claims 1 and 68 have been amended and claim 4 has been cancelled. Exemplary support for the claim amendments can be found throughout the specification and claims as filed.

Applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections in view of the foregoing amendments and the following remarks.

### **Rejections under 35 U.S.C. § 112**

(i) Claims 1-6, 9, and 59-71 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Without conceding the propriety of the rejection and merely in order to expedite prosecution, independent claim 1 has been amended to delete the limitation "using white light, with the proviso that the white light is not evanescent wave light". Accordingly, the rejection under 35 U.S.C. § 112, first paragraph, should be withdrawn in light of the foregoing amendments to claim 1.

(ii) Claims 1-6, 9, and 59-71 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite.

Without conceding the propriety of the rejection and merely in order to expedite prosecution, independent claim 1 has been amended to clarify the claim as suggested by the Examiner at pages 5-6 of the Office Action. Accordingly, the rejection under 35 U.S.C. § 112, second paragraph, should be withdrawn.

**Rejections under 35 U.S.C. § 103**

(i) Claims 1-3, 5, 6, 70, and 71 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,045,996 (hereinafter "Cronin") in view of *Yguerabide et al.*, Analytical Biochemistry, 262:137-156 (1998) (hereinafter "Yguerabide").

Without conceding the propriety of the rejection and in order to expedite prosecution, Applicants respectfully submit that independent claim 1 has been amended to add the features recited in cancelled claim 4. As claim 4 has not been rejected as being obvious over Cronin and Yguerabide, Applicants respectfully submit that amended independent claim 1 is patentable over Cronin and Yguerabide. As such, in view of at least the foregoing, the rejection of claims 2, 3, 5, 6, 70, and 71 over Cronin and Yguerabide should be withdrawn.

(ii) Claims 4, 68, and 69 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Cronin in view of Yguerabide, and further in view of *Service*, Science, 282:396-399 (1998) (hereinafter "Service").

Service has been cited as allegedly teaching the deficiencies of Cronin and Yguerabide. In particular, Service has been cited to teach the features recited in claim 4. As noted hereinabove, independent claim 1 has been amended to incorporate the features of cancelled claim 4.

Amended independent claim 1 recites a method for detecting specifically an allele of a pharmacogenetically relevant gene involved in drug metabolism in a sample, said allele comprising a target nucleotide sequence that is unique to said allele, said method comprising, *inter alia*, contacting the sample with a capture probe

(i) that is immobilized on a solid surface and (ii) that hybridizes to said nucleic acid molecule comprising said target nucleotide sequence, wherein said nucleic acid molecule is not labeled with scattered-light detectable particles, and wherein said nucleic acid probe is labeled with scattered-light detectable particles, as presently recited in amended independent claim 1.

Service relates to microchip arrays. Like Cronin and Yguerabide, Service does not disclose or suggest contacting the sample with a capture probe (i) that is immobilized on a solid surface and (ii) that hybridizes to said nucleic acid molecule comprising said target nucleotide sequence, wherein said nucleic acid molecule is not labeled with scattered-light detectable particles, and wherein said nucleic acid probe is labeled with scattered-light detectable particles, as presently recited in amended independent claim 1.

Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness of amended independent claim 1 over Cronin, Yguerabide, and Service. In view of at least the foregoing, the obviousness rejection over Cronin, Yguerabide, and Service should be withdrawn.

(iii) Claims 9, 59-65, and 67 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Cronin in view of Yguerabide, and further in view of *Yguerabide et al.*, Analytical Biochemistry, 262:157-176 (1998) (hereinafter "Yguerabide-II").

Yguerabide-II has been cited as teaching the deficiencies of Cronin and Yguerabide. In particular, Yguerabide-II has been cited to teach the features recited in claims 9, 59-65, and 67. As cited, Yguerabide-II fails to cure at least the above-

noted deficiencies of the combination of Cronin and Yguerabide. Accordingly, claims 9, 59-65, and 67 are patentable over the cited references for at least the same reasons for which amended independent claim 1 is patentable.

(iv) Claims 61, 64, and 66 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Cronin in view of Yguerabide, Yguerabide-II, and further in view of *Haider et al.*, Experimental Cell Research, 234:498-506 (1997) (hereinafter "Haider").

Haider has been cited as teaching the deficiencies of Cronin, Yguerabide, and Yguerabide-II. In particular, Haider has been cited to teach the features recited in dependent claims 61, 64, and 66. As cited, Haider fails to cure at least the above-noted deficiencies of the combination of Cronin, Yguerabide, and Yguerabide-II. Accordingly, claims 61, 64, and 66 are patentable over the cited references for at least the same reasons for which amended independent claim 1 is patentable.

### **Conclusion**

Applicants invite the Examiner to contact Applicants' representative at the telephone number listed below if any issues remain in this matter, or if a discussion regarding any portion of the application is desired by the Examiner.

In the event that this paper is not timely filed within the currently set shortened statutory period, Applicants respectfully petition for an appropriate extension of time. The fees for such extension of time may be charged to our Deposit Account No. 02-4800.

In the event that any additional fees are due with this paper, please charge  
our Deposit Account No. 02-4800.

Respectfully submitted,

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